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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 205

HERMAN WEINMANN,

Appellant,

vs.

J. HOWARD McGRATH, ATTORNEY GENERAL OF THE UNITED STATES, AS SUCCESSOR TO ALIEN PROPERTY CUSTODIAN, ET AL.

APPEAL FROM THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

STATEMENT AS TO JURISDICTION

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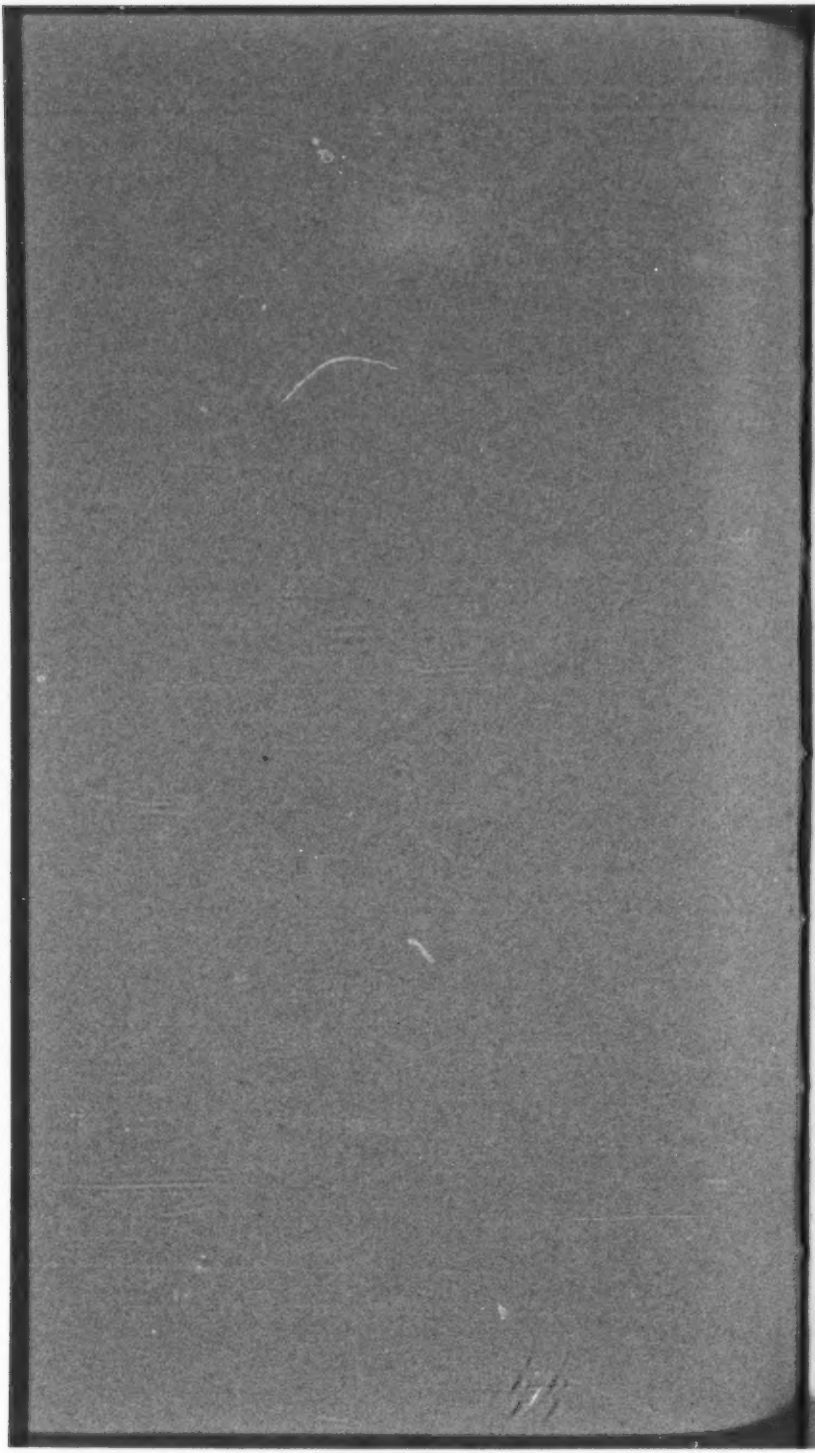

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IN THE DISTRICT COURT OF APPEAL,
SECOND APPELLATE DISTRICT,
STATE OF CALIFORNIA
DIVISION ONE

2nd Civil 17913

IN THE MATTER OF THE ESTATE OF CHRISTIAN F. REIHS,
Deceased

HERMAN WEINMANN,
Petitioner and Appellant,
vs.

J. HOWARD McGRATH, ATTORNEY GENERAL OF THE UNITED STATES, AS SUCCESSOR TO ALIEN PROPERTY CUSTODIAN,
Objector and Respondent;

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, A CORPORATION,
Executor

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, Petitioner-Appellant submits herewith his statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on

appeal to review the judgment of the District Court of Appeal, Second Appellate District, State of California, Division One, entered in this case.

Opinion Below

The opinion in the District Court of Appeal is reported in 102 California Appellate Reports (2nd), p. — (Advance Report Citation: 102 Advance Cal. Appellate Reports, p. 284). A copy of the opinion of the District Appellate Court, findings of fact, conclusions of law and decree are attached hereto as Appendix A.

Jurisdiction

The judgment of the District Court of Appeal, State of California, Second Appellate District Division One, was entered on February 13, 1951, and became final April 12, 1951. A petition for appeal to the Supreme Court is presented to the said District Court of Appeal herewith, to wit on 21st day of June, 1951. The jurisdiction of the Supreme Court to review the decision by direct appeal is conferred by Title 28, United States Code, Sect. 1257(2).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Southwestern Bell Tel. Co.* v. *Oklahoma,* 303 U. S. 206, and cases cited at p. 213; *Ward* v. *Love,* 253 U. S. 17, 22; *Dahnke-Walker Milling Co.* v. *Bondurant,* 257 U. S. 282, 289; *United States* v. *Pink,* 315 U. S. 203, 238.

Questions Presented

Where the President of the United States in the exercise of American war power against Germany, has entered into agreements with our Allies of World War II, for the international control and civil government of the occupied German territory, after the surrender:

A. That the extraterritorial rights and all extraterritorial matters affecting the inhabitants of the occupied territory shall be controlled by the Allied Representatives, as they may deem necessary; and that the decision of the Allied Representatives shall be final, and shall override all former German law inconsistent therewith; and,

B. That any treaty or international agreement to which Germany is or was a party—necessarily including the treaty of 1923 between the United States and Germany—granting reciprocal rights of inheritance to the nationals of each—was suspended and its revival made dependent upon the decision of the Allied governments;

may the State of California, thereafter, and during the existence of these agreements:

A. By statutory enactment, grant, and constitutionally guarantee legal rights to property in California to enemy aliens who are subject to Military Government for Germany, and the Allied Representatives.

B. By judicial processes submit the said international agreements to trial procedures, and determine as a legal fact, that these agreements did not impair the extraterritorial right of alien enemies in occupied Germany to take property in California; and

C. Judicially determine that reciprocally, the statutory rights of inheritance under German laws and constitution, remained in force and effect unimpaired by presidential international agreements; contrary to the plain and unequivocal terms of the agreements.

D. Judicially determine that under California inheritance statutes there passed to and vested in alien enemies resident in occupied Germany, under Military Government for Germany, a constitutionally guaranteed right to inherit property in California.

All points raised in the assignments of error are also presented. The questions presented, stated above, set forth the major issue.

State Statute Involved

The state statute involved and applicable to the issues of this case, as of November, 1946, the date of death of testator, is Chapter 1160, page 2208 of the California Statutes of 1945 (Cal. Probate Code Sect. 259). A copy appears as Appendix C hereto. The pertinent provisions state:

> "The right of aliens not residing within the United States or its territories to take personal property in this state by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take personal property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are resident. It shall be presumed that such reciprocal rights exist and this presumption shall be conclusive unless prior to the hearing on any petition for distribution of all or a portion of such property to an alien heir, devisee or legatee not residing within the United States or its territories, a petition is filed by any person interested in the estate requesting the court to find that either one or both of such reciprocal rights does not or do not exist as to the country of which such alien heir, devisee or legatee is resident . . ."

Statement of the Case

Christian F. Reihs, a citizen and resident of California died in November, 1946, leaving an estate consisting of personal property in California. He made substantial bequests to persons and institutions in the United States which are not involved in the issues here. By the terms of his will he bequeathed approximately One Hundred Thirty Thousand Dollars ($130,000) to institutions and relatives in the American Zone of Occupied Germany. The appellant Weinmann, an American citizen and resident of the State of New Jersey, is the next of kin of decedent entitled to suc-

ceed, under the California laws of succession, to that portion of the estate of decedent which becomes intestate by reason of the failure of the bequests made to the enemy aliens in this case. The United States Alien Property Custodian filed a vesting order claiming whatever interests the nonresident alien enemies (except the alien charitable institutions) may have in these bequests. Upon hearing of Weinmann's petition for determination of interest of persons entitled to the estate, the Superior Court of Los Angeles, California, entered its judgment that Sect. 259 of the California Probate Code (Ch. 1160, Laws of 1945), granted reciprocal rights to these enemy aliens, and that there passed to and vested in them at the date of death of decedent the respective amounts of money specifically bequeathed. The trial court judicially determined, as a fact, that the former German statutory laws of inheritance remained in full force and effect and unimpaired by the international agreements made by the President in the conduct of the war against Germany; and that the reciprocal requirements of the California law existed in Germany under Military Government, after the surrender. The appeal is from the judgment of the District Court of Appeal affirming the judgment of the lower court, on the grounds that the evidence sustained the findings and conclusions of the trial court; and that no error existed under the constitutional or international principles raised by Appellant.

Constitutional Provisions Involved

Article II, Section 1, Clause 1: Vesting executive power in the President; Article II, Section 2, Clause 1: Making the President Commander in Chief of the Armed Forces; Article VI, Clause 2: Making the Federal Constitution, and international agreements made by the President, under his constitutional authority, the supreme law, and obligatory

upon every judge. The applicable provisions of the United States Constitution are set forth in Appendix B, hereto.

International Agreements

Declaration Regarding the Defeat of Germany, known as the Declaration of Berlin, effective date, June, 1945: Tripartite Conference of Berlin, sometimes known as the Potsdam Agreement, effective date, 2nd August, 1945; Agreement Between Allied Governments on Certain Additional Requirements Imposed on Germany, known as Allied Representatives Proclamation 2, effective 20 September, 1945. Applicable provisions of these international agreements are set forth and cited in Appendix B hereto.

Federal Question Raised

The federal questions were raised by the Petitioner-Appellant at the following stages of the proceedings below:

The Petitioner introduced into evidence the above-cited international agreements, at the hearing by the trial court of Appellant's Petitioner to determine interests in the estate. Petitioner made these agreements the basis for objections to introduction by Respondent-Appellee of unofficial, private evidence in the case contrary to these agreements. Objections were overruled. (Ex. "G," R. Tr. p. 93; Ex. "F," R. Tr. p. 75; Ex. "H," R. Tr. p. 89.)

Petitioner-Appellant made the international agreements and federal constitutional provisions, above cited, the basis of motion for new trial and to vacate judgment of the trial court (Tr. p. 29, l. 18-25; p. 30, l. 14-22). Motions for new trial and to vacate judgment were denied by the trial court (Tr. p. 42).

The federal questions were made part of the record on appeal and were presented in written briefs and oral argument to the District Court of Appeal of California. The

District Appellate Court affirmed the judgment, and order denying motions for new trial and to vacate judgment, as appears in transcript of the record filed herewith. Judgment of District Court of Appeal became final April 12, 1951 under Section 4(c) Article VI California Constitution, sixty days after entry of decision of Appellate Court, February 12, 1951 (Tr. p. 58, 93).

There has been entered and made part of the record on appeal, the certificate of the Presiding Justice, District Court of Appeal, certifying existence of federal questions; and that the judgment appealed is that of the highest state court in which a decision of this case could be had (Tr. p. 94).

Substantial Question

This case is seemingly one of first instance and the decision of the State Court is in probable conflict with applicable decisions of legal principles governing federal powers and executive authority in international affairs and foreign wars. The application of these principles to the statutory laws of California, and to the appealed decision, is sought by appeal to the Supreme Court.

The impact of principles of national sovereignty upon the issues of this case was avoided by the State Court assuming to exercise a discretion it did not have. Despite evidence of international agreements made by the President in the current war against Germany, the Court assumed the authority to take evidence of the effect of the agreements upon former German statutory law. The evidence consisted of the German statutes themselves; and, the testimony of private persons that in their opinion the German law remained in full force and effect, unimpaired by the presidential agreements, in evidence.

The international agreements speak for themselves in plain, clear and unequivocal terms, as they affect the extra-

territorial rights of the inhabitants of occupied Germany, in November, 1946. "They fall as clearly in the realm of political decisions as all other aspects of military alliances in futherance of the common objectives of victory." (Opinion, Justice Douglas, *Hiroto* v. *MacArthur*, 338 U. S. 197, 208.) This opinion specifically mentions the Potsdam Agreement, which Appellant introduced in evidence in the instant case. Portions applicable to Germany, and the issues here, are set forth in Appendix B, pp. 35-40.

> "When the President moves to make arrangements with other nations—he acts in a political role on a military matter. His discretion cannot be reviewed by the judiciary." (*Hiroto* v. *MacArthur, supra*, p. 209.)

This appeal is taken from the attempt of the California Court to define and limit these international agreements so as to exclude from their application domestic statutory rights of inheritance at issue. Such judicial attempts are contrary to applicable provisions of the federal Constitution, and the sovereign powers existing in the executive branch of the federal government. (*United States* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304, 318-322.)

As construed and applied to the issues in this case, Chapter 1160, California Laws of 1945, is repugnant to the federal Constitution, Article II, Section 1, Clause 1, vesting executive power in the President and the exclusive authority to negotiate with our Allies of World War II an agreement to control the extraterritorial legal rights of the inhabitants of occupied Germany, after the surrender. (Agreement Between Allied Governments on Certain Additional Requirements Imposed on Germany, Append. B, p. 39 (12) (48). (*United States* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304, 318-321; *United States* v. *Belmont*, 301 U. S. 324, 331-332; *United States* v. *Pink*, 315 U. S. 203, 233, 242.)

As construed and applied to the issues in this case the cited California law is repugnant to Article II, Section 2, Clause 1 of the federal Constitution, which makes the President Commander in Chief of the Armed Forces and gives him exclusive authority to exercise the war power against Germany.

The establishment of a civil government in conquered occupied territory after cessation of hostilities and before a treaty of peace is an exercise of war power. (*Cross* v. *Harrison*, 16 How. 164, 189, 14 L. Ed. 889); and the agreements made by the President with our Allies of World War II for the establishment of an international government for occupied Germany, after the surrender was "in furtherance of the common objectives of victory." (*Hiroto* v. *MacArthur, et al.*, 338 U. S. 197, 208).

INTERNATIONAL AGREEMENTS

By these agreements the President declared that after the surrender there existed no central German government or authority (Declaration of Berlin, Append. B., p. 35).

It was further agreed, in effect, that the Treaty of 1923 between the United States and Germany was abrogated as of the date of surrender. (Agreement Imposing Additional Requirements on Germany. Append. B., p. 38, III (6)). This treaty had established reciprocal rights of inheritance between the nationals of the United States and Germany.

In reference to these matters the decision appealed found the testimony of witnesses amply sustained the holding that reciprocity of inheritance existed between the nationals of the two countries, after the surrender. (Append. A, p. 21.) And the decision further found that the former German statutes remained in full force and effect, unimpaired by the agreement that the German government

was dissolved and the Allied Representatives assumed supreme authority. (Append. A, pp. 26 (XI), 27(II).)

As construed and applied to the facts and issues of this case, Chapter 1160, California Laws of 1945 is repugnant to Article VI, Clause 2, of the federal Constitution, which makes international agreements executed by the President, under his constitutional authority, the supreme law. The decision appealed does violence to the provisions of this same Article and Clause, which makes the constitution and such international agreements obligatory upon every judge. As to both propositions this Article of the Constitution is mandatory and self-executing.

The errors in the decision appealed seem to rest in the attempt of the Court to determine statutory private rights of inheritance within the legal concepts of domestic legislation and statutory terms. Such terms, in their narrow meaning are inapplicable and unacceptable to determination of issues inextricably involved in dealings of the United States in foreign affairs.

In the decision appealed the Court holds that there "passed to and vested in" the alien enemies in this case specific sums of money in California (Append A, pp. 31, 32). But the system of law and the form of international government to which these aliens were subject, including their extraterritorial legal rights does not express the concept of private vested legal rights. The point was argued and not challenged in the instant case. Such is the opinion of the Attorney General of the United States given in another case involving the same section of the California law. This opinion states:

> "Although retroactive laws are repugnant to the Constitution of the United States, it must be remembered that the issue in this case relates, not to Ameri-

> can law, but to German laws. In its supreme sovereign capacity the occupying authorities in Germany, through its Allied Control Council, is unrestricted in the laws it may enact. Retroactive laws in Germany today are valid.
>
> "It is equally idle to speak of vested rights in connection with rights of inheritance as they existed in Germany on any date during the war." (Opinion filed in the Estate of Marie V. Peters, Los Angeles County, Case No. 233,316, Vesting Order, September, 1946.)

The American concept of private vested rights in property is not necessarily expressed in any principle of international law; nor is it recognized by some civilized nations (*United States* v. *Allstoetter, et al.*, United States Military Tribunal III, Nuremberg, Germany, December 4, 1947, and authorities cited at pp. 10614-23, 10636-37).

Under such circumstances it is idle to speak of legal rights of the inhabitants of occupied Germany, during domestic occupation, as a "vested" right to property in California; or "reciprocal" to the domestic statutory right guaranteed by the Constitution of the State of California. The legal concept under the California law is too narrow and inadequate to encompass the broader concepts of private rights under the law of nations and the international agreements entered into by the President of the United States to accomplish the objects and purposes of the war against Germany. Irrespective of these legal distinctions it should be apparent that the opinions or conclusions of the judiciary of forty-eight state jurisdictions may not under our system of government, attach their respective and varied judgments as to what legal rights the President in the exercise of his constitutional powers, intended or conceived the inhabitants of Germany to have, extraterritorially.

It seems evident, if embarrassment, perhaps serious inferences of lack of American unity in decisions of important

state jurisdictions, are to be avoided, the distinctions necessary to proper exercise of federal executive powers in time of foreign war, and, legislative and judicial authority of the State of California in domestic matters, be recognized in this case.

No state can require the federal foreign policy to conform to its own domestic policies. (*United States* v. *Pink*, 315 U. S. 203, 233; *United States* v. *Belmont*, 301 U. S. 324, 331-332.)

In all negotiations and dealings of the United States with foreign nations, essentially in time of foreign war, the United States speaks with one voice and acts as one—state lines disappear. As to such purposes, the State of California (New York) does not exist. (Id.)

The final decision in this case will establish or deny that the Courts of California have the power to review exercise of military powers abroad and the President's conduct of external affairs in our government. (See Memorandum Opinion Justice Jackson, Oct. Term, 1948, 335 U. S. 876).

It is respectfully submitted, there is a violation of the above-cited constitutional provisions and principles of national sovereignty in the construction and application of the California law involved in this case and in the decision and judgment of the Court entered herein. It is respectfully submitted that the questions presented on appeal are substantial and of grave public importance.

GEORGE T. GOGGIN,
Counsel for Petitioner-Appellant,

PIERCE LONERGAN,
Of Counsel.

APPENDIX "A"

OPINION OF THE DISTRICT COURT OF APPEAL

Advance Report Citation, 102 A. C. A. 284. 102 Cal. App. Reports, (2nd) p. —.

(Civ. No. 17913. Second Dist., Div. One. Feb. 13, 1951.)

Estate of Christian F. Reihs, Deceased, Hermann Weinmann, Appellant, v. Attorney General, as Successor to the Alien Property Custodian of the United States, Respondent.

Appeal from a judgment of the Superior Court of Los Angeles County and from an order denying a new trial. John Gee Clark, Judge. Judgment affirmed; appeal from order dismissed.

Proceeding for determination of interest in a decedent's estate. Judgment for defendant affirmed.

George T. Goggin and Pierce Lonergan for Appellant.

Harold I. Baynton, Assistant United States Attorney General, Director, Office of Alien Property; Ernest E. Tolin, United States Attorney, Valentine C. Hammack, Special Assistant to United States Attorney General, George B. Searls and Joseph Laufer, Attorneys, Department of Justice, Washington, D. C., for Respondent.

DRAPEAU, *J.*:

Christian F. Reihs, a citizen of the United States and a resident of Los Angeles County, died testate on November 24, 1946. His will was admitted to probate and respondent bank qualified as executor.

The will made certain bequests to residents of the United States, as well as to certain charitable institutions. Among them was a legacy of $1,000 to petitioner, Hermann Weinmann, a half-cousin of testator and his nearest of kin in the United States.

In addition to several bequests to charitable institutions in Germany, the testator left $5,000 to Mrs. Elsa Reiss Strobel. The entire residue which consisted of personal

property, he gave in equal shares to his two nephews, Carl and Gustav Reiss. The three named persons survived testator, and all reside in the city of Schorndorf, Wuerttemberg, Germany, which has been included within the American Zone of Occupation since the collapse of Germany in 1945.

By his vesting order of October 9, 1947, the Attorney General of the United States as successor to the Alien Property Custodian has taken these interests in the estate. He also appears herein for the German charitable institutions whose interests he has refrained from vesting.

The instant petition for determination of interest in decedent's estate which was filed September 30, 1948, alleges in substance that on November 24, 1946, when the testator died, American citizens had no right to take property or receive payment from German estates. Therefore, that the German charitable institutions and the three German legatees, above mentioned, are ineligible to take under Section 259 of the Probate Code.

That section conditions the right of a nonresident alien to inherit upon the existence of a reciprocal right on the part of American citizens to inherit in the country of which the alien is a national.

Accordingly, petitioner as the testator's next of kin, claims all the property bequeathed to the German legatees. The attorney general, denying the asserted absence of reciprocal inheritance rights for American citizens in Germany and relying on his vesting order, seeks distribution to himself of the legacies to the three German citizens.

Among others, the trial court found that under the German laws of inheritance in effect at the time of testator's death, "and still in force, title to an estate accruing in Germany passes by force of law as of the time of decedent's death to the person or persons designated by will or by the law of succession, regardless of nationality, domicile, or residence of said distributee or distributees.

> "XI. That under the laws, proclamations and regulations issued and promulgated by the Allied Control Council for Germany and the Military Government for Germany, United States Zone, or otherwise, the Ger-

man laws of inheritance, under which title to an estate accruing in Germany passes by force of law as of the time of decedent's death to the person or persons designated by will or by the law of succession, regardless of nationality, domicile or residence of such distributee or distributees, have remained in full force and effect.

"XII. That under the German laws of inheritance existing as of the date of the decedent, to wit: November 24, 1946, the right to receive an inheritance followed the right to inherit the same."

As a conclusion of law from the facts found, the court held that petitioner had "failed to sustain the burden of establishing that the laws of Germany do not grant reciprocal rights to inherit upon the same terms and conditions as residents and citizens of Germany." Accordingly, it was adjudged that the German charitable institutions and the attorney general, as successor in interest to the three German nationals named as legatees, were entitled to distribution of the bequests made to them under the will.

Petitioner appeals from the final decree thereafter entered.

On November 24, 1946, the date of death of testator, section 259, *supra,* read as follows:

"The right of aliens not residing within the United States or its territories to take real property in this State by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take real property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents and the right of aliens not residing in the United States or its territories to take personal property in this State by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right

upon the part of citizens of the United States to take personal property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents. It shall be presumed that such reciprocal rights exist and this presumption shall be conclusive unless prior to the hearing on any petition for distribution of all or a portion of such property to an alien heir, devisee or legatee not residing within the United States or its territories a petition is filed by any person interested in the estate requesting the court to find that either one or both of such reciprocal rights does not or do not exist as to the country of which such alien heir, devisee or legatee is resident. Upon the hearing of such petition the burden of establishing the nonexistence of such reciprocal right or rights shall be upon the petitioner. Notice of such hearing shall be given in the manner provided by Section 1200 of this code." (Stats. 1945, p. 2208, ch. 1160. In effect Sept. 15, 1945.)

The question presented for decision is whether on November 24, 1946, when the testator died, the law of Germany accorded to American citizens a "reciprocal right" to take personal property by will or succession "upon the same terms and conditions as residents and citizens" of Germany, pursuant to the terms of the above quoted section.

Appellant here urges that the trial court erred and exceeded its jurisdiction in making the findings of fact, hereinabove quoted, and the conclusions of law based thereon.

In this connection, it is argued that after the unconditional surrender of May 8, 1945, Germany was occupied by an international organization known as Military Government for Germany. By agreement the inhabitants were governed by the Allied Control Council under a uniform rule applying to the whole of the former German territory. That as a result, such military government and the laws promulgated to carry out its purposes "controlled the legal substantive rights of the aliens in this case to property, internal and external, in the occupied territory; that under the form of government to which these aliens were subject,

the aliens in this case were not granted legal substantive vested rights or interests to property, including property in estates, in the State of California or elsewhere."

In other words, the establishment of such military government in Germany effected an abrogation of all vested rights theretofore existing under German civil law, including the right of inheritance.

In support of this theory, appellant introduced in evidence international agreements, government proclamations and various Military Government laws for the United States Zone, all of which are now before this court as exhibits in the case.

Appellant also called as an expert witness, David Brandon Bernstein, Esq., a California attorney admitted to the Bar in 1926, who was a Military Government officer and a Military Government Court Judge at Kassel and Frankfurt, Germany, from March of 1945 until October of 1948.

This witness in his early testimony stated that three military government laws prevented American citizens from succeeding to estates in Germany, to wit: MGUS Laws, 52, 53 and 59. However, he stated that on November 24, 1946, certain of the German courts were functioning, and that they "used the German Code, the German laws which were in existence prior to occupation, and which were not repealed, changed or modified by Military Government," referring specifically to the Fifth Book, of the German Civil Code, relating to inheritance. Also, that the Military Government Courts did not exercise jurisdiction over the laws of succession or inheritance in Germany and did not administer them, except in the interpretation of Law 52 or 53.

Law 52 authorized the blocking and control of properties of nonresident citizens of the Allied nations, including Americans. Its language indicates that its aim is to preserve and not to destroy the interests and property of nonresidents, and although it may prevent immediate enjoyment thereof, it does not affect the right of inheritance, as such. Mr. Bernstein ventured the opinion that under this law "the right to an inheritance is not interfered with," but the American heir cannot take possession of the property without a license from Military Government under

Law No. 53, the Foreign Exchange Control Law, and "then Military Government may or may not grant that license. That is discretionary."

The object of Law 59 was to return to the victims of Nazi persecution the properties of which they had been deprived by duress and other unlawful means. In any event, that law affected American and German citizens alike, and Mr. Bernstein so testified.

Article II of Proclamation No. 2 of Military Government dated September 19, 1945, provided that German law in force at the time of the occupation, except as theretofore abrogated, suspended, or modified by Military Government or the Control Council, should apply in each area of the United States zone of occupation until repealed or superseded by a new law enacted by the Military Government.

As heretofore mentioned, Wuerttemberg, the residence of legatees is within the United States Zone of Occupation.

Nowhere in Mr. Bernstein's testimony did he point to any specific military government legislation which changed or modified the German laws of inheritance. In fact the only repealing legislation brought to the attention of the trial court was that contained in Respondent's Exhibit 22-a: Law No. 1 of Control Council which expressly repealed those "laws of a political or discriminatory nature upon which the Nazi regime rested."

Respondent's witness Dr. Karl Von Lewinski, a national of Germany, also qualified as an expert on German law. He studied law in this country at Harvard and Columbia Law Schools and in 1907 was appointed a judge of the County Court at Berlin where he served for a year and a half. For the next 10 years he was an assistant in both the Prussian Department of Justice and the Federal Department of Justice and also a Justice of the Court of Appeals of Berlin. From 1922 to 1932 he served in the United States as German Agent for the Mixed Claims Commission, Consular of the German Embassy and Consul General in New York. Upon his return to Germany in 1932 he practiced law in Berlin until within three months of the trial herein, specializing in probate law.

He testified that he had handled four to five hundred cases in which Americans had inherited estates in Germany and vice versa: that before the war the right to inherit was recognized and the assets transferred; that the German inheritance laws are contained in the German Civil Code, Fifth Book, and that article 154 of the Weimar Constitution enacted in 1919 recognized and guaranteed the right to inherit in accord with the Civil Code. Also, at the time here in question, there were no other laws in Germany having any bearing on the right of inheritance.

Article 154 of the Constitution and sections 1922 to 1942, inclusive, of the Fifth Book of German Civil Code, Law of Inheritance, Order of Succession, were identified by the witness and translations thereof were introduced in evidence.

With respect to the pertinent sections of the Civil Code, this witness testified that no distinction is made between nationals of Germany and foreigners, including American citizens; that under the German laws of inheritance any foreigner may succeed to an estate in Germany on the same terms as a national of that country.

When asked: "... the civil code relating to inheritance as set forth in the Fifth Book, is that in existence in Germany today?" appellant objected on the ground that an enemy alien is not entitled to testify in courts of this State and moved to strike the testimony. The court thereupon denied the motion and overruled the objection. The witness answered the question as follows: "The German Civil Code as it existed before the war is still in force, with changes, with amendments, which have been made by Military Government legislation." He was then asked to state "whether or not the Military Government had made any changes which have repealed, abrogated or suspended any of the German laws of inheritance, as set forth in the Fifth Book and as set forth in the Government Exhibit containing Sections 1922 to 1942, inclusive?" To this he replied: "The Fifth Book of the Civil Code, particularly the sections mentioned by counsel, 1922 to 1942, have not been changed by Control Council legislation. . . . And they are still in force." He further gave as his opinion that under German law, a

German national and foreigners, including American citizens, all inherit on the same terms and conditions.

Dr. Von Lewinski was then interrogated by the trial court as follows:

> "By the Court: Q. Doctor, as you know, the Court is here concerned with the question of a right of aliens, not residing within the United States, to take either real or personal property, or the proceeds thereof, in this estate (Sic) by succession or testamentary disposition, and that is governed by Section 259 of our Probate Code, and the question before me is to determine: Did there exist on November 23, 1946, in the Province of Wuerttemberg . . . a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as residents and citizens of Wuerttemberg. . . . Now, this question is really reasonably simple. We will reduce it down to the elemental question and I will ask you then whether or not a nephew or nephews named as residuary legatees in a last will and testament who were United States citizens would have the right to inherit under that will property . . . of the decedent, the testator, located in the state of Wuerttemberg, Germany?
>
> "The Witness: According to the German inheritance law, the inheritance passes to persons who are either appointed heirs by the last will of another person, or to those persons who according to the law of succession will succeed to the estate as heirs. The German law speaks of persons when it speaks of the heirs of the decedent. The German inheritance law does not make any difference between the nationals of Germany or of any other country. As I said, it speaks only of persons. The law of inheritance was in force at the time of the decedent's death. Under the law American citizens are appointed heirs. The inheritance passed and by virtue of the German inheritance law at the time of death to the heirs. That means the title passed to the heirs because they had the right to inherit."

The foregoing resume discloses amply sufficient evidence to support not only the findings of fact objected to by appellant, but as well the conclusions of law based thereon, particularly "That on the date of death of the decedent, Christian F. Reihs, to wit: November 24, 1946, there existed under the laws of Germany a reciprocal right upon the part of citizens of the United States to take by inheritance personal property or the proceeds thereof, upon the same terms and conditions as residents and citizens of Germany."

As was so aptly stated in the very recent case of Estate of Schluttig (Advance Report Citation: 36 A. C. 367, 374.) 36 Cal. 2d——, —— (224 P. 2d 695): "Considering the nature of the evidence before the trial court, it is clear that the issue to be determined involved questions as to the existence, translation, interpretation and effect of the laws of Germany and Austria. Upon these subjects the superior court heard highly conflicting testimony by experts upon the laws of those countries and their application under given circumstances. The determination of the issue, therefore, was one of fact, and the finding of the trial court, if supported by substantial evidence will not be disturbed on appeal."

Appellant cites as error the ruling of the trial court which placed the burden of proof under section 259, probate Code, upon the petitioner.

This question is settled by the holding in Estate of Giordano, 85 Cal. App. 2d 588, 590 (193 P. 2d 771). It is there pointed out that said section 259 was added to the code in 1941, and remained in effect until September 15, 1945, when it was amended (Stats. 1945, ch. 1160). It was again amended effective as of September 19, 1947 (Stats. 1947 ch. 1042). In the cited case it was said: "It thus appears that at the time of the death of the deceased, and up to September 15, 1945, the burden of proving such reciprocal rights rested on the foreign alien heir, or in this case, the Alien Property Custodian who represented her. Commencing on September 15, 1945, and to September 19, 1947, the burden of proof rested on Anna Maria Fino (petitioner). The enactments effective on September 19, 1947,

returned the burden of proving reciprocal rights to the foreign heir, or here, the Alien Property Custodian."

Under the terms of the statute as of the date of death of testator here, November 24, 1946, the burden of proof was upon petitioner. Hence, there was no error in the ruling.

With respect to appellant's claim that section 259, *supra*, is unconstitutional by reason of conflict with the Constitution of the United States, in that it attempts to grant rights which have been reserved to the federal government, our Supreme Court in Palermo v. Stockton Theatres, Inc., 32 Cal. 2d 53, 64 (195 P. 2d 1), stated as follows: "Subsequent to our granting a hearing in this case, the Supreme Court of the United States, in Clark v. Allen (1947), 331 U. S. 503 (67 S. Ct. 1431, 91 L. Ed. 1633, 1638, 170 A. L. R. 953), rejected a similar contention with reference to section 259 of the California Probate Code. It was there held that although under the provisions of the state law the right of a nonresident alien to take property in California by will or succession depends upon a reciprocal right of United States residents and citizens to take property in such alien's country, and although the existence of such reciprocal right depends in part at least upon treaties between the government of the United States and that of the particular foreign country involved, the California statute is 'not unconstitutional as an extension of state power into a field of foreign affairs exclusively reserved to the federal government, and that California has not entered into the forbidden domain of negotiating with a foreign country or of making a compact with it contrary to article I, section 10, of the federal Constitution.' (Estate of Knutzen (1948), 31 Cal. 2d 573, 577 (191 P. 2d 747); see also Estate of Bevilacqua (1948), 31 Cal. 2d 580, 582 (191 P. 2d 752).)"

As has been stated repeatedly, a reviewing court will not interfere with the action of the trial court in denying or granting a motion for new trial, unless a manifest and unmistakable abuse of discretion appears. (Jordan v. Schrieber, 74 Cal. App. 2d 800, 805 (169 P. 2d 394).) No abuse of discretion has been shown here.

This cause was fully and fairly tried, and no errors ap-

pear in the record. The findings and judgment are amply supported by the evidence.

For the reasons stated, the judgment appealed from is affirmed. The purported appeal from the order denying motion for new trial is dismissed.

White, P. J., and Doran, J., concurred.

Findings of Fact and Conclusions of Law

In the Matter of the Estate of Christian F. Reihs, Deceased, No. 263,185, in the Superior Court of the State of California, in and for the County of Los Angeles.

The petition of Herman Weinmann under Probate Code Section 259 and For Decree Determining Interest in Estate and the petition of the Executor for instruction and for further partial distribution and objections thereto, came on regularly for hearing and the taking of evidence before the above-entitled court in Department 6 thereof, the Honorable John Gee Clark, Judge presiding, on June 27, 1949, and the said hearing having continued thereafter to and including June 29, 1949, at each of which times the petitioner, Herman Weinmann, appeared by his attorney, Pierce Lonergan, Esq., and the Executor appeared by its attorney, George Gardner, Esq., and the Attorney General of the United States appeared by his attorneys, James M. Carter, United States Attorney for the Southern District of California, Clyde C. Downing, Assistant United States Attorney, and Valentine C. Hammack and Lillian C. Scott, Special Assistants to the Attorney General, and evidence, oral and documentary, having been introduced and the parties hereto having submitted briefs and the matter having been submitted for decision on September 30, 1949, the Court now makes its findings of fact and conclusions of law constituting its decision herein and orders that judgment and decree be entered in accordance therewith.

Findings of Fact

I

That all notices of the time and place of the hearing of said petitions have been regularly and duly given in all respects in the manner and for the periods required by law.

II

That Christian F. Reihs died testate in Los Angeles County, State of California, on November 24, 1946; that at the time of his death, Christian F. Reihs was a citizen of the United States and a resident of Los Angeles County, State of California; that said decedent left an estate consisting of personal property situated wholly within the State of California.

III

That Bank of America National Trust and Savings Association, is the duly appointed, qualified, and acting executor of the will of the said decedent, Christian F. Reihs, which said will was duly admitted to probate on the 3rd day of January, 1947.

IV

That the decedent, Christian F. Reihs, made certain devises and bequests to residents of the United States, corporations, and charitable institutions organized and existing under and by virtue of the laws of the United States or of citizens of the United States, as follows: * * * (Relates to bequests to American residents.)

Said decedent also bequeathed to Mrs. Elsa Reiss Strobel of Schorndorf, Wuerttemberg, Germany, $5,000; to District Hospital, City of Schorndorf, Wuerttemberg, Germany, $5,000; to Old Folks Welfare, City of Schorndorf, Wuerttemberg, Germany, $5,000; to Old Folks Welfare, Town of Haubersbronn, Wuerttemberg, Germany, $2,000; to Old Folks Welfare, Town of Grosshappach, Germany, $2,000; and bequeathed all the rest, residue, and remainder of his estate to his nephews, Arl Reiss and Gustav Reiss, both of the City of Schorndorf, Wuerttemberg, Germany. * * * (Identifies German charitable institutions by correct names.)

V

That Mrs. Elsa Reiss Strobel, Karl Reiss, designated in said will as "Carl" Reiss, and Gustav Reiss survived the

decedent and were residents and citizens of Germany at the time of the death of the decedent.

VI

That Herman Weinmann is a citizen and resident of the United States and a half-cousin of the decedent, Christian F. Reihs, and next of kin of the decedent residing in this country.

VII

That the Attorney General of the United States, by virtue of Vesting Order No. 9988, dated October 9, 1947, vested all of the rights, title, interest, and claim of any kind or character whatsoever of Mrs. Elsa Reiss Strobel, Carl Reiss and Gustav Reiss and of their heirs, in and to the estate of Christian F. Reihs, deceased.

VIII

That the Attorney General of the United States did not vest the interest of the following named foreign beneficiaries: District Hospital, City of Schorndorf, Wuerttemberg, Germany; Old Folks Welfare, City of Schorndorf, Wuerttemberg, Germany; Old Folks Welfare, Town of Haubersbronn, Wuerttemberg, Germany; Old Folks Welfare, Town of Grosshappach, Germany.

IX

That the time for filing claims against said estate has expired, and all claims have been paid, all debts and expenses of said estate have been paid except remaining costs of administration, inheritance and estate taxes; that upon a determination of the persons entitled to participate in the said estate and payment of expenses of administration, inheritance and estate taxes, the estate is in all respects ready to be closed.

X

That under the German laws of inheritance in effect at the time of the death of Christian F. Reihs, on November 24, 1946, and still in force, title to an estate accruing in

Germany passes by force of law as of the time of decedent's death to the person or persons designated by will or by the law of succession, regardless of nationality, domicile, or residence of said distributee or distributees.

XI

That under the laws, proclamations and regulations issued and promulgated by the Allied Control Council for Germany and the Military Government for Germany, United States Zone, or otherwise, the German laws of inheritance, under which title to an estate accruing in Germany passes by force of law as of the time of decedent's death to the person or persons designated by will or by the law of succession, regardless of nationality, domicile or residence of such distributee or distributees, have remained in full force and effect.

XII

That under the German laws of inheritance existing as of the date of death of the decedent, to wit: November 24, 1946, the right to receive an inheritance followed the right to inherit the same.

Conclusions of Law

From the foregoing facts, the Court makes the following conclusions of law:

I

That on the date of the death of the decedent, Christian F. Reihs, to wit: November 24, 1946, there existed under the laws of Germany a reciprocal right upon the part of citizens of the United States to take by inheritance personal property or the proceeds thereof, upon the same terms and conditions as residents and citizens of Germany.

II

That the German laws of inheritance which grant the right of citizens of the United States to take property located in Germany by way of inheritance upon the same terms and conditions as residents and citizens of Germany

have not been impaired, superseded, or repealed by the laws, proclamations and regulations issued and proclaimed by the Allied Control Council for Germany and the Military Government for Germany, United States Zone, or otherwise.

III

That the right of citizens of the United States to inherit a German estate, as granted by the German laws of inheritance is a reciprocal right to take by inheritance as contemplated and required by Section 259 of the California Probate Code.

IV

That upon the death of the decedent, Christian F. Reihs, there passed to and vested in * * * (designated American residents and respective bequests); in Mrs. Elsa Reiss Strobel, of Schorndorf, Wuerttemberg, Germany, $5,000; in District Hospital, City of Schorndorf, Wuerttemberg, Germany, $5,000; in Old Persons Home of the City of Schorndorf, Wuerttemberg, Germany (erroneously designated as "Old Folks Welfare, City of Schorndorf"), $5,000; in Local Welfare Committee of the Town of Haubersbronn, Wuerttemberg, Germany (erroneously designated as "Old Folks Welfare, Town of Haubersbronn"), $2,000; in Local Welfare Organization of the Village of Grosshappach, Germany (erroneously designated as "Old Folks Welfare, Town of Grosshappach"), $2,000; and all the rest, residue and remainder of his estate to Karl Reiss and Gustav Reiss, both of the City of Schorndorf, Wuerttemberg, Germany, nephews of the decedent, in equal shares remaining after distribution of the specific bequests provided for, subject to costs of administration.

V

That Herman Weinmann is not entitled to distribution of any part of the money or other personal property specifically devised and bequeathed to Mrs. Elsa Reiss Strobel, District Hospital, Old Folks Welfare, City of Schorndorf; Old Folks Welfare, Town of Haubersbronn; Old Folks Wel-

fare, Town of Grosshappach; Karl Reiss and Gustav Reiss, or any part of the money or other personal property constituting the residuary estate of the said decedent pursuant to Section 259, California Probate Code, or otherwise.

VI

That all of the right, title and interest of Mrs. Elsa Reiss Strobel, Karl Reiss and Gustav Reiss in and to the estate of the said decedent is vested in the Attorney General of the United States by virtue of Vesting Order No. 9988, dated October 9, 1947.

VII

That the petitioner, Herman Weinmann, has failed to sustain the burden of establishing that the laws of Germany do not grant reciprocal rights to inherit upon the same terms and conditions as residents and citizens of Germany.

VIII

That the Attorney General of the United States is entitled to distribution of the sum of $5,000, constituting the said bequest to Elsa Reiss Strobel, and the said Attorney General of the United States is entitled to distribution of all of the property constituting the residuary estate of the decedent, Christian F. Reihs, bequeathed in said will to Karl Reiss and Gustav Reiss after distribution of the specific bequests provided for in said will and after payment of lawful expenses of administration and inheritance and estate taxes.

Let the decree and judgment of this Court be entered accordingly.

Dated: This 16 day of January, 1950.

JOHN GEE CLARK,
Judge of the Superior Court.

Decree Determining Interests in Estate under Section 259, California Probate Code, and for Distribution

In the Matter of the Estate of Christian F. Reihs, Deceased, No. 263,185, in the Superior Court of the State of California, in and for the County of Los Angeles.

The petition of Herman Weinmann under Probate Code Section 259 and For decree Determining Interest in Estate and the petition of the Executor for instructions and for further partial distribution and objections thereto, came on regularly for hearing and the taking of evidence before the above-entitled Court in Department 6 thereof, the Honorable John Gee Clark, Judge presiding, on June 27, 1949, and the said hearing having continued thereafter to and including June 29, 1949, at each of which times the petitioner, Herman Weinmann, appeared by his attorney, Pierce Lonergan, Esq., and the Executor appeared by its attorney, George Gardner, Esq., and the Attorney General of the United States appeared by his attorneys, James M. Carter, United States Attorney for the Southern District of California, Clyde C. Downing, Assistant United States Attorney, and Valentine C. Hammack and Lillian C. Scott, Special Assistants to the Attorney General, and evidence, oral and documentary, having been introduced and the parties hereto having submitted briefs and the matter having been submitted for decision on September 30, 1949, and the Court having duly made and filed herein its findings of fact and conclusions of law and having determined that the Attorney General of the United States is entitled to judgment herein upon the issue of reciprocity as provided by Section 259 et seq., California Probate Code.

It Is Hereby Ordered, Adjudged and Decreed by the Court that Christian F. Reihs died testate in Los Angeles County, State of California, on November 24, 1946, leaving surviving him, among others, Mrs. Elsa Reiss Strobel, Karl Reiss and Gustav Reiss, and that all of said persons were residents and citizens of Germany on November 24, 1946.

It Is Further Ordered, Adjudged and Decreed by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in the Town of Silver

City, New Mexico (for charity), a legatee under the will of the decedent, the legacy of $5,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the death of the decedent, Christian F. Reihs, there passed to and vested in the Public Schools of Silver City, New Mexico (for charity), a legatee under the will of the decedent, the legacy of $5,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in the Grant County Hospital, Silver City, New Mexico (for charity), a legatee under the will of the decedent, the legacy of $5,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in State Teachers Public Library, Silver City, New Mexico (for books) a legatee under the will of the decedent, the legacy of $5,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in Carrie Tingsley Childrens Hospital, Hot Springs, New Mexico, $2,000.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in the City of Los Angeles, California (park fund), a legatee under the will of the decedent, the legacy of $2,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in the city of Los Angeles, California (library fund), a legatee under the will of the decedent, the legacy of $2,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in Lincoln Hospital, Los Angeles, California, a legatee under the will of decedent, the legacy of $2,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs,

there passed to and vested in the Old Peoples Home, 1720 McArthur Avenue, Oakland, California, a legatee under the will of the decedent, the legacy of $2,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in Herman Weinmann, 223 69th Street, Gutenberg, New Jersey, a legatee under the will of the decedent, the legacy of $1,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in William Weinmann, 3935 46th Street, Long Island City, New York, a legatee under the will of the decedent, the legacy of $1,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in Mrs. Anna Weinmann, 195-15 45th Avenue, Flushing, New York, a legatee under the will of the decedent, the legacy of $1,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in Mrs. Elsie Francis, 195-15 45th Avenue, Flushing, New York, a legatee under the will of the decedent, the legacy of $1,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in Mrs. Elsa Reiss Stroble, of Schorndorf, Wuerttenberg, Germany, a legatee under the will of the decedent, the legacy of $5,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in District Hospital, City of Schorndorf, Wuerttemberg, Germany, a legatee under the will of the decedent, the legacy of $5,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in Old Persons Home of the

City of Schorndorf, Wuerttemberg, Germany, erroneously designated as "Old Folks Welfare, City of Schorndorf," a legatee under the will of the decedent, the legacy of $5,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in Local Welfare Committee of the Town of Haubersbronn, Wuerttemberg, Germany, erroneously designated as "Old Folks Welfare, Town of Haubersbronn," a legatee under the will of the decedent, the legacy of $2,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in Local Welfare Organization of the Village of Grosshappach, Germany, erroneously designated as "Old Folks Welfare, Town of Grosshappach," a legatee under the will of the decedent, the legacy of $2,000 provided in said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in Karl Reiss and Gustav Reiss, the residuary legatees named in said will, in equal shares, the rest, residue, and remainder of the property and estate of said decedent.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that all of the right, title, and interest of Mrs. Elsa Reiss Strobel, Karl Reiss and Gustav Reiss, in and to the estate of the decedent, Christian F. Reihs, vested in the Attorney General of the United States by virtue of vesting order 9988 dated October 9, 1947.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that the following legatees:

Town of Silver City, New Mexico (for charity) $5,000;
Public Schools of Silver City, New Mexico (for charity), $5,000;
Grant County Hospital, Silver City, New Mexico (for charity), $5,000;
State Teachers Public Library, Silver City, New Mexico (for books), $5,000;

Carrie Tingley Childrens Hospital, Hot Springs, New Mexico, $2,000;

City of Los Angeles, California (for Park Fund), $2,000;

City of Los Angeles, California (for Library Fund), $2,000;

Lincoln Hospital, Los Angeles, California, $2,000;

Old Peoples Home, 1720 MacArthur Ave., Oakland, California, $2,000;

Herman Weinmann, 223 69th St., Gutenberg, New Jersey, $1,000;

William Weinmann, 3935 46th St., Long Island City, New York, $1,000;

Mrs. Anna Weinmann, 195-15 45th Ave., Flushing, New York, $1,000;

Mrs. Elsie Francis, 195-15 45th Ave., Flushing, New York, $1,000;

District Hospital, City of Schorndorf, Wuerttemberg, Germany, $5,000;

Old Persons Home of the City of Schorndorf, Wuerttemberg, Germany (erroneously designated as "Old Folks Welfare, City of Schorndorf"), $5,000;

Local Welfare Committee of the Town of Haubersbronn, Wuerttemberg, Germany (erroneously designated as "Old Folks Welfare, Town of Haubersbronn"), $2,000;

Local Welfare Organization of the Village of Grosshappach, Germany, (erroneously designated as "Old Folks Welfare, Town of Grosshappach"), $2,000;

are entitled to distribution of the respective legacies as provided by the said will of the decedent, Christian F. Reihs.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that the Attorney General of the United States is entitled to distribution of the sum of $5,000 constituting the legacy given to Mrs. Elsa Reiss Strobel by said will, and that the said Attorney General of the United States is entitled to distribution of all of the property constituting the residuary estate of the decedent, Christian F. Reihs, bequeathed in said will to Karl Reiss and Gustav Reiss, after payment of legacies, lawful expenses of administration and inheritance and estate taxes.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the court that Herman Weinmann is not entitled to distribution of any of the money or other personal property bequeathed in said will to Elsa Reiss Strobel, Wuerttemberg, Germany, District Hospital, City of Schorndorf, Wuerttemberg, Germany, Old Folks Welfare, City of Schorndorf, Wuerttemberg, Germany, Old Folks Welfare, Town of Haubersbronn, Wuerttemberg, Germany, Old Folks Welfare, Town of Grosshappach, Germany, or any of the money or other personal property constituting the rest and residue of the estate of the decedent, Christian F. Reihs, bequeathed to Karl Reiss and Gustav Reiss.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that Herman Weinmann is entitled to receive from the said estate only the legacy of $1,000 given to him by the will of the said decedent.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that the petitioner, Herman Weinmann is not entitled to recover costs herein.

Dated: This 16 day of January, 1950.

JOHN GEE CLARK,
Judge of the Superior Court.

APPENDIX B

UNITED STATES CONSTITUTION

Article II—The President

Section 1, Paragraph 1: The executive Power shall be vested in a President of the United States of America.

Section 2, Clause 1: The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Services of the United States; * * *.

Article VI—Supreme Law of Land

Clause 2: Supreme Law of Land.

This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every States shall be bound thereby, anything in the Constitution or Laws of any State to the contrary nothwithstanding.

International Agreements

For Government of Germany, After Surrender. Declaration Regarding Defeat of Germany, June 5, 1945; Department of State Bulletin, Vol. XII, No. 311, pp. 1051, 1055:

> "There is no central Government or authority in Germany capable of accepting responsibility for the maintenance of order, the administration of the country and compliance with the requirements of the victorious powers." (Second paragraph).
>
> "The Representatives of the Supreme Commands of the United Kingdom, the United States of America, the Union of Soviet Socialist Republics and the French Republic, herein called the 'Allied Representatives,' acting by authority of their respective Governments and in the interests of the United Nations, accordingly make the following Declaration: (Fourth Paragraph).
>
> "The Governments of the United Kingdom, the United States of America and the Union of Soviet Socialist Republics, and the Provisional Government of the French Republic, hereby assume supreme authority with respect to Germany, including all the powers possessed by the German Government, the High Command and any state, municipal or local government or authority. The assumption for the purpose stated

above, of the said authority and powers does not effect the annexation of Germany. (Fifth Paragraph)

"The Governments of the United Kingdom, the United States of America and the Union of Soviet Socialist Republics and the Provisional Government of the French Republic, will hereafter determine the boundaries of Germany or any part thereof and the status of Germany or of any area at present being part of German territory. (Sixth Paragraph).

"In virtue of the supreme authority and powers thus assumed by the four Governments, the Allied Representatives announce the following requirements arising from the complete defeat and unconditional surrender of Germany with which Germany must comply: (Seventh Paragraph).

Article 13

"(a) In the exercise of the supreme authority with respect to Germany assumed by the Governments of the United Kingdom, the United States of America and the Union of Soviet Socialist Republics and the Provisional Government of the French Republic, the four Allied Governments will take such steps including the complete disarmament and demilitarization of Germany, as they deem requisite for future peace and security.

"(b) The Allied Representatives will impose on Germany additional political, administrative, economic, financial, military and other requirements arising from the complete defeat of Germany. The Allied Representatives, or persons or agencies duly designated to act on their authority will issue proclamations, orders, ordinances and instructions for the purpose of laying down such additional requirements and of giving effect to the other provisions of this Declaration. All German authorities and the German people shall carry out unconditionally the requirements of the Allied Representatives, and shall fully comply with all such proc-

lamations, orders, ordinances and instructions. (Page 1055)

5 June, 1945,
1800 Hours Central European Time.

Signed by the Allied Representatives:

DWIGHT EISENHOWER,
General of the Army, USA.

ZHUKOV.

B. L. MONTGOMERY.

J. DE LATTRE-TASSIGNY,
General d'Armee.

Tripartite Conference of Berlin—Potsdam—Dept. of State Bulletin, Vol. XIII, No. 319, pp. 153, 154, 155:

The Political and Economic Principles To Govern the Treatment of Germany in the Initial Control Period.

III—Germany.

A. Political Principles.

"1. In accordance with the Agreement on Control Machinery in Germany supreme authority in Germany is exercised, on instruction from their respective Governments, by the Commanders in Chief of the armed forces of the United States of America, the United Kingdom, the Union of Soviet Socialist Republics, and the French Republic, each in his own zone of occupation, and also jointly in matters affecting Germany as a whole, in their capacity as members of the Control Council.

"2. So far as is practical there shall be uniformity of treatment of the German population throughout Germany. (Page 154).

"9. (IV). For the time being no central German government shall be established . . ." (Page 154).

B. Economic Principles.

"18. Appropriate steps shall be taken by the Control Council to exercise control and the power of disposition over German owned external assets not already under the control of United Nations which have taken part in the war against Germany. (Page 155).

Date: 2 August 1945.

Approved: J. V. Stalin, Harry S. Truman, C. R. Attlee.

Agreement Between Allied Governments on Certain Additional Requirements to Be Imposed on Germany. Dept. of State Bulletin, Vol. XIII, No. 328, Oct. 7, 1945, pp. 515, 516, 521.

To the People of Germany

"We, the Allied Representatives, Commanders in Chief of the forces of occupation of the United Kingdom, the United States of America, the Union of Soviet Socialist Republics, and the French Republic, pursuant to the Declaration regarding the defeat of Germany, signed at Berlin on the 5th June, 1945, hereby announce certain additional requirements arising from the complete defeat and unconditional surrender of Germany with which Germany must comply (in so far as these have not already been fulfilled), as follows (Page 515):

Section III

"5. The Allied Representatives will regulate all matters affecting Germany's relations with other countries. No foreign obligations, undertakings or commitments of any kind will be assumed or entered into by or on behalf of German authorities or nationals without the sanction of the Allied Representatives.

"6. The Allied Representatives will give directions concerning the abrogation, bringing into force, revival or application of any treaty, convention or other inter-

national agreement, or any part or provision thereof, to which Germany is or has been a party.

"7(a). In virtue of the unconditional surrender of Germany, and as of the date of such surrender, the diplomatic, consular, commercial and other relations of the German State with other States have ceased to exist (Pages 515, 516).

Section V

"12. The Allied Representatives will exercise such control as they deem necessary over all or any part or aspect of German finance, agriculture (including forestry), production and mining, public utilities, industry, trade, distribution and economy generally, internal and external, and over all related or ancillary matters, including the direction or prohibition of the manufacture, production, construction, treatment, use and disposal of any buildings, establishments, installations, public or private works, plant, equipment, products, materials, stocks or resources. Detailed statements of the subjects to which the present provision applies, together with the requirements of the Allied Representatives in regard thereto, will from time to time be communicated to the German authorities (Page 516).

Section XI

"44. In any proceedings before any German Court or authority judicial notice shall be taken of the provisions of the Declaration and of all proclamations, orders, ordinances and instructions issued thereunder, which shall override any provisions of German law inconsistent therewith (Page 521).

Section XIII

"48. In the event of any doubt as to the meaning or interpretation of any term or expression in the Declaration and in any proclamations, orders, ordinances and instructions issued thereunder, the decision

of the Allied Representatives shall be final" (Page 521).

Done at Berlin, the 20th day of September, 1945.

B. L. MONTGOMERY,
Field Marshal;
L. KOELTZ,
V. D. SOKOLOVSKY,
DWIGHT D. EISENHOWER.

APPENDIX C

CALIFORNIA STATUTES, 1945, P. 2208, Chap. 1160

(California Probate Code—Deering—Sect. 259)

"The right of aliens not residing within the United States or its territories to take real property in this State by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take real property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents and the right of aliens not residing in the United States or its territories to take personal property in this State by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take personal property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents. It shall be presumed that such reciprocal rights exist and this presumption shall be conclusive unless prior to the hearing on any petition for distribution of all or a portion of such property to an alien heir, devisee or legatee not resid-

ing within the United States or its territories a petition is filed by any person interestd in the estate requesting the court to find that either one or both of such reciprocal rights does not or do not exist as to the country of which such alien heir, devisee or legatee is resident. Upon the hearing of such petition the burden of establishing the nonexistence of such reciprocal right or rights shall be upon the petitioner. Notice of such hearing shall be given in the manner provided by Section 1200 of this code."

(6261)